

will be taken back.^{5/} Consequently, Pacific Bell's proposed conditional assignments will result in take-backs, in violation of Sections 201(b) and 202(a) of the Act. *Id.*

Pacific Bell's discriminatory overlay plan is made even more anticompetitive by the process through which it was adopted. The plan was chosen after several months of discussion among many interested parties, including local exchange carriers, cellular carriers, paging companies and alternative carriers such as Teleport. During these discussions, most parties concluded the 310 area code should be split in traditional fashion to provide the required relief. Ten parties agreed to this solution; only Pacific Bell and GTE dissented. Nevertheless, Pacific Bell, in its supposedly neutral role as numbering administrator for California, chose to adopt the overlay plan.

This decision was contrary to basic telephone industry practices that have developed over the twelve years since divestiture. Those practices call for reaching industry decisions based on consensus.^{6/} Ironically, consensus was reached in the 310 area code discussions — only one "interest group" did not agree — but Pacific Bell refused to

^{5/} Pacific Bell's proposal for "conditional" NXX codes implies that wireless carriers will be given some option as to what codes they will receive. In practice, the choice will be between codes in the new overlay area code immediately and obtaining codes that the wireless carrier is likely to have to later shift to the new area code. In either case, Pacific Bell's wireline operation will be the beneficiary of preferential treatment because it will be able to obtain NXX codes in the 310 area code without any risk of having to return them and, in fact, will be able to demand the return of codes by wireless carriers.

^{6/} Under industry guidelines "[c]onsensus is established when substantial agreement has been reached among interest groups participating in the consideration of the subject at hand. . . Substantial agreement means more than a simple majority, but not necessarily unanimity." See NPA Code Relief Planning Guidelines, INC 94-1216-004, at 11. This definition of consensus is used uniformly throughout telephone industry forums.

implement the consensus position in favor of an area code split. While the telephone industry guidelines specifically governing area code relief had not been adopted at the time of the 310 area code relief planning meetings, the use of the consensus process was a standard industry procedure and Pacific Bell's conscious decision to ignore the consensus reached in this case demonstrates that its decision to implement a discriminatory overlay was improperly motivated.

Moreover, Pacific Bell's decision to implement an overlay was made despite its knowledge that the other participants objected strongly to the implementation plan Pacific Bell proposed and even though full implementation of Pacific Bell's overlay plan would take longer than full implementation of an area code split. Thus, it is plain that Pacific Bell understood the discriminatory implications of its plan and decided to go ahead with that plan anyway. Consequently, the Commission should act swiftly to declare Pacific Bell's overlay plan unlawful.

III. In the Current Environment, Area Code Splits Should Be the Preferred Method for Responding to Area Code Exhaust.

The need to relieve the exhaustion of the 310 area code is not unique. Indeed, many area codes are likely to exhaust over the next five years. For instance, projections indicate that area codes covering Atlanta (404), Miami (305), the Pasadena area (818), southern and eastern California (619) and the state of Connecticut (203) will run out of

numbers in the next three years. Because the same issues are raised in each of these areas, the Commission should further define the requirements for area code relief.^{7/}

Specifically, the Commission should require the use of area code splits unless such relief is impracticable. As shown below, area code splits provide sufficient relief to area code exhaustion and retain the basic characteristics of the NANP. Area code splits, unlike overlays, also conform to the principles adopted by the Commission in the *Chicago Area Code Order*. Splits also avoid difficult consumer issues, such as negative effects on existing dialing plans, that are inevitable in the implementation of overlays.

First, the Commission should recognize that area code splits provide as much relief for area code exhaustion as overlays. A split adds exactly as many numbers to an area as an overlay, but merely distributes them into specific geographic areas, rather than layering

^{7/} While the Commission stated in the *Chicago Area Code Order* that it overruled its earlier determination that it retains plenary jurisdiction over numbering, that does not obviate its responsibility to define national policies regarding area code assignments. *Chicago Area Code Order* at ¶ 9 n.18. Cox submits that the Commission does have plenary jurisdiction and, regardless of the specific phraseology employed, the substance of the original determination in the *Cellular Interconnection Order* is correct. See *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2912 (1987). Commission oversight of telephone numbering issues is necessary to effect the purposes of the Communications Act and is consistent with the Commission's jurisdiction over interstate communications. As the Commission's analysis in the *Chicago Area Code Order* establishes, "it is a practical and economic impossibility to separate NPAs for local use from NPAs for national use." *Chicago Area Code Order* at ¶ 14. Thus, the Commission has ample authority to impose national standards for area code assignment. See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 n.4 (1986) (preemption of intrastate regulation is permissible when it is not possible to separate interstate and intrastate components).

them on top of the existing code. Thus, a split and an overlay provide the same amount of relief.

Second, area code splits should be favored because they help to retain the basic characteristics of the NANP. The NANP was founded on the notion of geographically distinct numbering areas. The existence of these areas helps callers to evaluate where the person associated with a number is located, which is important for many reasons. This geographic identity, moreover, can be as important (or more important) to a nearby caller as to a faraway caller. For instance, calls to one area code may be local calls, while calls to another area code may be treated as toll calls. Overlays break down these distinctions and muddy the caller's sense of where her call is going.^{8/} The likely result is consumer confusion.

Third, area code splits avoid creating discriminatory competitive advantages for incumbents in the telecommunications marketplace. In an overlay, incumbents retain control over the NXX codes in the existing area code. At the same time, the growth in the need for NXX codes will be predominantly among newer entrants, including wireless companies and alternative local carriers. These carriers will have a disproportionate share of the numbers in the new area code. This will create a competitive advantage for incumbents.

8/ The situation would be even worse in a "multiple overlay," a species of overlay that covers two or more existing area codes with the new area code. Pacific Bell's 310 overlay proposal actually calls for using the same overlay code to provide relief for the adjacent 818 and 213 area codes. Thus, a caller to the new overlay code might not be able to tell if the call was going to Pasadena, central Los Angeles or Long Beach, each of which is now in a separate area code.

In particular, changing from an incumbent to a new entrant not only will require a new phone number, but also a new area code. Even those who are obtaining telephone service for the first time (such as new residents) are likely to prefer the old area code over the new area code, and this will reduce the ability of competitors to attract new business.^{9/}

Because overlays inherently give incumbents advantages over newer entrants, they also generally are unreasonable and unreasonably discriminatory under the rubric adopted by the Commission in the *Chicago Area Code Order*. As the Commission explained, carriers "must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible . . ." *Chicago Area Code Order* at ¶ 35. A proposal that "would impose significant competitive disadvantages" on one group of carriers "while giving certain advantages" to another, is plainly unreasonable. *Id.* Given the significant competitive disadvantages imposed on new entrants by any overlay plan, such plans must be strongly disfavored.

Similarly, because overlay plans inherently impose different terms and conditions on new entrants (who can obtain only "new" numbers) than those available to incumbents (who can continue to use "old" numbers to serve the vast majority of their

^{9/} It also is likely that incumbent local exchange carriers will use every opportunity to exploit the advantage they obtain by having access to "old" numbers. Local exchange carriers that are subject to intraLATA toll competition in states that do not mandate equal access for that service frequently tout the ease of using their long distance service compared to the services offered by interexchange carriers, so it is not difficult to imagine advertising campaigns based on the convenience of the "old" area code. Incumbents also could maximize the availability of "old" numbers to the public by using "new" numbers for internal purposes and for uses, like data transmission, that do not require familiar numbers. New entrants will not have that opportunity.

customers), they also raise significant questions of discrimination under Section 202(a). *Id.* at ¶ 26. This is especially true in light of the Commission's requirement that the proponent of a discriminatory plan must show "that other plans that do not have unreasonably discriminatory impacts could not also equally meet the needs for additional numbers." *Id.* at ¶ 28. To date, there does not appear to have been a single instance in which an area code split could not have met the needs for additional numbers as well as any overlay; indeed, the number of cases when a split would not meet the needs for numbers is likely to be vanishingly small. Thus, the Commission's own interpretations of the requirements of Sections 201(b) and 202(a) of the Communications Act require adoption of a policy strongly favoring geographic splits as the appropriate mechanism for relief of area code exhaust.

Finally, the use of area code splits avoids difficult consumer issues. Unlike overlays, area code splits do not require adjustments to dialing plans. Overlays also are quite likely to cause customer confusion.

No matter how an overlay is implemented, it requires some adjustment to dialing plans in the affected area. Essentially, an overlay requires either the adoption of uniform 11-digit dialing or inconsistent dialing patterns for local calls. Uniform dialing requires every consumer to modify his dialing patterns. In addition to the inconvenience of the additional digits, uniform 11-digit dialing also may require software or hardware modifications in PBXs, computer dial-up arrangements and similar uses. Uniform 11-digit

dialing also has other social costs, such as increased misdialing and the loss of flexibility in dialing patterns.^{10/}

The alternative is to use 7-digit dialing within each of the overlayed area codes, with 11-digit dialing between the two area codes. This dialing plan, however, reinforces the advantages that an incumbent obtains from the implementation of an overlay, and also is likely to lead to confusion. For instance, retaining 7-digit dialing for calls inside the area code would require callers to check the number of the telephone they are calling from before calling out. This would be a particular problem from pay telephones and for any caller who is not using the caller's usual telephone. While dialing plan issues are quite significant in the overlay context, they simply do not arise in area code splits because splits permit retention of existing dialing plans.

Overlays also are likely to be confusing to consumers. The dialing plan issues described above demonstrate some of the likely areas of confusion, but there are others as well. Overlays will result in different area codes for next door neighbors, for offices in the same building or even for two lines at the same location. This will confuse callers both in the affected geographic region and outside it as well. In short, overlays are not consumer friendly. This is yet another reason to avoid overlays and for the Commission to express a policy preference for area code splits.

^{10/} For instance, California recently completed an effort to adopt uniform 7-digit dialing for all calls within any area code. Use of 11-digit dialing in the 310 area code would be inconsistent with an otherwise uniform statewide dialing plan.

IV. The Rush of Telephone Companies to Propose Overlays Is Inconsistent With Past Practice.

Area code overlays are a relatively new phenomenon. It is only in the last few years that telephone companies have begun to propose and implement overlays rather than area code splits, but now overlays appear to be the mechanism of choice among local exchange carriers for resolving the exhaustion of existing area codes. The evidence suggests that overlays are not, however, a response to the needs of the telephone network. Rather, they are a strategic competitive response, designed to limit the growth of competition to existing local exchange monopolies. In this context, the need for policy direction from the Commission to prevent the growth of anticompetitive overlays becomes particularly evident.

It is a matter of historical fact that the advent of overlays is quite recent. No overlays were formally proposed, let alone implemented, during the first thirty years of the operation of the NANP. All area code relief was accomplished by geographic splits, even in the smallest geographic areas.

Today, overlays are being proposed in areas where splits would have been adopted routinely in the past. The 310 overlay, for instance, involves an area larger than previous splits, and the 310 area code covers about twice the land area of the 213 area code. Similarly, the overlay now being proposed for Atlanta by Southern Bell covers a relatively large geographic area, an area that also is larger than previous splits, particularly those in California or the New York City area. The areas where overlays are proposed generally also include appropriate geographic boundaries for splits, such as county lines and terrain features. These kinds of boundaries provide logical locations for splits.

If, as it appears, there is no need for overlays, then there must be some other reason that local exchange carriers are now favoring overlays. The evidence strongly suggests that the reason is that overlays benefit LECs' competitive positions. It is no coincidence that LEC overlay proposals uniformly have been made over the objections of non-LEC interests, including cellular carriers and emerging competitive local carriers. This was true of the first overlay, in New York City, and has been true of every overlay since that time. The Commission's *Chicago Area Code Order*, for instance, arose because of a complaint from wireless interests. *Chicago Area Code Order* at ¶ 1. The 310 overlay has sparked not only this proceeding but two separate formal complaints to the California Public Utilities Commission, one from a cellular carrier and one from a carrier that plans to offer competitive local service.^{11/} In every case where an overlay has been proposed, the LEC has shrugged off concerns about the competitive effects of its proposal and tried to go ahead with the overlay. As noted above, in the case of 310 overlay proposal, Pacific Bell has proposed to implement an overlay even though ten of the twelve participants in the relief process, that is every participant except the LECs, objected to the overlay.

Further evidence of the LEC intent to foist overlays onto the telecommunications industry is the LEC tendency to assume that an overlay is the proper solution from the start of the relief process. In the case of 310, Pacific Bell put its current proposal on the table in December, 1993 and did not meaningfully alter it through nine

^{11/} See *Airtouch Communications, Inc. v. Pacific Bell*, Case 94-09-058 (filed Oct. 10, 1994); *MCI Telecommunications Corporation v. Pacific Bell*, Case 95-01-001 (filed Jan. 3, 1995).

months of discussion, even in the face of continued opposition from all non-LEC parties.^{12/} In other cases, the dominant local exchange carrier simply has proposed its plan to state regulators without any previous industry review, essentially hoping to achieve a *fait accompli*. The apparent inability of LECs to consider the views of the rest of the telecommunications industry in deliberations about area code relief is significant evidence that they are using area code overlays to create a competitive advantage.^{13/}

The pitfalls of LEC efforts to impose overlays would be greatly diminished if the area code relief planning process were open to the entire industry from the start. An open process requires notification to industry parties that may be interested well in advance of the expected exhaust of the area code. An open process also requires the numbering administrator, which under current conditions is the dominant LEC in the state, to provide information to all participants as soon as it becomes available. Information such as current NXX code usage, the distribution of NXX code assignments and growth trends is necessary if the parties are to participate in the area code relief process in a meaningful way.

^{12/} Pacific Bell has informed the Commission, in its comments in the Chicago proceeding, that the overlay plan was "the closest the industry could come to in achieving a consensus plan." Comments of Pacific Bell, IAD File No. 94-102, at 10. Considering that Pacific Bell made no material alterations to its initial plan, and that every industry segment other than LECs opposed the plan, this statement is disingenuous at best.

^{13/} In recent meetings concerning the 619 and 818 area codes, Pacific Bell has appeared to modify its position, with representatives stating that they have "no preconceived notions" regarding the appropriate relief plans for those area codes. If this is Pacific Bell's current position, it reflects a sea change from its earlier actions in attempting to impose a preconceived solution on the 310 area code.

In addition, it is particularly important that the area code relief process be opened to the industry **before** the dominant local exchange carrier has decided what plan it favors. Otherwise, the resulting focus on the dominant carrier's plan inevitably will prevent other plans from being considered adequately. The Commission can avoid the rush to judgment that appears to have characterized Pacific Bell's actions in the 310 area code and Ameritech's actions in the 708 area code by requiring the relief process to be open from the start.

V. True Local Number Portability Will Resolve Many of the Issues Created by Area Code Overlays and Reduce the Long Term Need for Telephone Numbers.

Many, if not most, of the discriminatory features of area code overlays result from the reality that only incumbents retain access to "old" numbers, with all of the advantages those numbers confer. In addition, one of the fundamental reasons for the recent rapid growth in number assignments is that current technology often requires inefficient use of NXX codes. Both of these issues, however, can be addressed through the implementation of true local number portability. Thus, the Commission should not merely step in to prevent the discriminatory effects of area code overlays, but also should work to address the root cause of many numbering disputes by pressing for the development of true number portability.

In this context, "true" local number portability is seamless integration of all of the functions necessary to permit a user to retain his telephone number when he switches from one carrier to another. True number portability would not use call forwarding

techniques or any other "interim" mechanism that requires assignment of extra telephone numbers to route calls from one carrier to another. True number portability would use concepts similar to those applied to 800 number portability, but on a local level, to route calls at the local level. Unlike 800 number portability, which depends on a single centralized database, this form of local number portability would use local, distributed databases to route calls.^{14/} Because these databases would be needed only at the point where a call is going to be routed in the local network, there would be no reason to require a centralized, nationally accessible database. For the same reason, true local number portability could be implemented on a piecemeal basis, rather than all at once on a nationwide basis.

True local number portability would eliminate most of the competitive concerns raised by overlays. True number portability would, for instance, eliminate the current practice of assigning NXX codes to individual carriers, just as that practice has been eliminated for 800 numbers. This would permit customers to switch carriers without switching numbers and, most important in the overlay context, without switching area codes. The elimination of NXX code assignments also would eliminate any incentives to "hoard" NXX codes in the old area code so as to have desirable numbers available for assignment to

^{14/} The telephone industry has defined several types of portability, such as service portability (portability between, for instance, cellular and landline carriers), provider portability (portability between two carriers in the same service) and location portability (portability between two relatively distant locations). The local portability described in these comments would provide both service portability and provider portability, but would not provide location portability. While location portability is important for 800 service and for uses like cellular roaming, it is not necessary for the introduction of local telephone competition.

customers at a later date.^{15/} In general, because number portability would eliminate the exclusive nature of NXX code assignments, it also effectively would eliminate any ability to discriminate in number assignments.

At the same time, true portability will help to conserve telephone numbers. Under the current regime, there are many circumstances when NXX codes are used inefficiently because of the exclusive nature of NXX assignments. For instance, rural cellular carriers often have to request multiple NXX codes if they wish to provide local calling in widely separated parts of an RSA. Similarly, in most cases every single carrier in an area code needs at least one NXX code under the current regime. As new services such as enhanced specialized mobile radio and PCS (with at least three and as many as six licensees in each geographic area) become available, duplicative NXX assignments will multiply, further reducing the efficiency of NXX code assignments.^{16/}

True portability greatly reduces the artificial demand for NXX codes (and therefore numbers) that exists under current conditions. In each of the circumstances described above, the extra NXX code assignments no longer will be necessary. Rural cellular carriers, for instance, will not need separate NXX codes to preserve local calling because, in a portable environment, they can use numbers from existing NXX codes. In a portable environment, multiple carriers in a single geographic area also will be able to use

^{15/} Under the current NXX code assignment guidelines, such hoarding is possible because a carrier is not required to completely fill its NXX codes before acquiring new ones.

^{16/} There are some cases in which NXX codes are shared, but doing so is difficult in most circumstances.

numbers in the existing pool of numbers, which will eliminate the need for duplicative NXX assignments.

Moreover, true number portability also will permit higher average fill rates for NXX codes that already are in use, because the pool of spare numbers will be shared among all users.^{17/} As a consequence, portability also will make better use of the codes that are in service. Thus, number portability will help to reduce the need for overlays or any other form of area code relief in the future.

Consequently, the Commission should take an active role in bringing number portability into the telecommunications marketplace. In particular, it should require the Bell companies and GTE to report to it regarding the progress being made towards implementing true portability, and should accept public comment on those reports. In addition, the Commission should establish specific requirements and deadlines for implementation. As the experience of 800 number portability demonstrates, such specific requirements are vital; otherwise telephone companies will stall both the development and implementation of the necessary technology.

^{17/} In practice, individual carriers need more spare capacity than they would if all carriers shared NXX codes. Shared spare capacity is less likely to be overrun by statistical fluctuations in demand, for instance. Similarly, much of the need to hold numbers after they no longer are in use will be eliminated in a portable environment. This is especially the case for carriers who must hold numbers out of service when a customer switches from one carrier to another. In a portable environment, the customer will take the number with her.

VI. Conclusion

For all of these reasons, Cox Enterprises, Inc. respectfully requests the Commission to act in accordance with the positions described herein.

Respectfully submitted,

COX ENTERPRISES, INC.

By: 

Werner K. Hartenberger
J.G. Harrington

Its Attorneys

Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

January 30, 1995

CERTIFICATE OF SERVICE

I, Cynthia R. Porter, hereby certify that today on this 30th day of January, 1995, I caused a copy of the Comments of Cox Enterprises, Inc. to be served by first-class mail, postage prepaid and/or hand delivery (*) to the following:

The Honorable Reed E. Hundt*
Chairman
Federal Communications Commission
1919 M Street, N.W., Rm. 814
Washington, D.C. 20554
(STOP CODE 0101)

The Hon. James H. Quello*
Commissioner
Federal Communications Commission
1919 M Street, N.W., Rm. 802
Washington, D.C. 20554
(STOP CODE 0106)

The Hon. Andrew C. Barrett*
Commissioner
Federal Communications Commission
1919 M Street, N.W., Rm. 826
Washington, D.C. 20554
(STOP CODE 0103)

The Honorable Susan Ness*
Commissioner
Federal Communications Commission
1919 M Street, N.W., Rm. 832
Washington, D.C. 20554
(STOP CODE 0104)

The Hon. Rachelle B. Chong*
Commissioner
Federal Communications Commission
1919 M Street, N.W., Rm. 844
Washington, D.C. 20554
(STOP CODE 0105)

Kathleen Wallman*
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Rm. 500
Washington, D.C. 20554
(STOP CODE 1600)

Peyton L. Wynns, Chief*
Industry Analysis Division
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W.
Room 100
Washington, D.C. 20037
(STOP CODE 1600F)

Manning J. Lee, Esq.
Senior Legal Regulatory Counsel
Teleport Communications Group, Inc.
One Teleport Drive, Suite 301
Staten Island, NY 10311


Cynthia R. Porter

EXHIBIT 2

Reply Comments of Cox Enterprises, Inc.

(Exhibits from Original Filing Omitted)

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Teleport Petition for Declaratory) IAD File No. 94-104
Ruling on Pacific Bell Area Code)
Numbering Plan)

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in response to the above-referenced petition for declaratory ruling.^{1/} Cox urges the Commission to adopt a preference for geographic splits to resolve issues of area code exhaust. Moreover, Pacific Bell's overlay proposal is unlawful and should not be implemented.

I. INTRODUCTION

The initial round of comments plainly establishes the need for the Commission to take an active role in setting policies to handle the growing problem of area code exhaust. As evidenced by the comments, most industry members believe that geographic splits should be the preferred method for handling these situations. The only industry members that prefer overlays are the LECs because of their ability to use overlays to discriminate against competitors.

Pacific Bell has demonstrated that its reason for proposing an overlay is to maintain the 310 area code for itself and its customers. Based on the Commission's ruling in the *Chicago Area Code Order*,^{2/} Pacific Bell's "exclusion" and "take back" provisions plainly render its proposal unlawful under Sections 201 and 202. In addition, Pacific Bell's procedure for adopting the overlay solution was anticompetitive. Although Pacific claims that it carefully

^{1/} Commission Seeks Comment on Teleport Petition for Declaratory Ruling on Pacific Bell Area Code Numbering Plan, IAD File No. 94-104, DA 94-1482, released December 15, 1994.

^{2/} Proposed 708 Relief Plan and 630 Numbering Plan Area Code, *Declaratory Ruling and Order*, IAD File No. 94-102, FCC 95-19 (rel. Jan. 23, 1995) (the "*Chicago Area Code Order*").

considered solutions to the 310 area code exhaust, it ignored the concerns of most industry members and its purported reasons for preferring the overlay are disingenuous. Pacific is perfectly capable of implementing a geographic split; an overlay, however, allows it to favor itself in acquiring competitively valuable numbers.

Finally, the Commission should adopt a preference for geographic splits because splits are the overwhelming choice of customers. In a survey that was released since the initial round of comments in this proceeding were due, customers in all categories strongly favored geographic splits rather than overlays as the best and fairest solution to area code exhaust. See Exhibit 1. Customers held this preference even if their area code would change. Moreover, when customers were informed about the benefits and drawbacks of each program, they were even more likely to prefer geographic splits. Thus, customer preferences provide additional grounds for a policy favoring splits over overlays.

II. THE COMMISSION SHOULD ADOPT A PREFERENCE FOR GEOGRAPHIC SPLITS TO RESPOND TO AREA CODE EXHAUST.

A. It Is Appropriate for the Commission to Adopt a Preference.

As a threshold matter, it is appropriate for the Commission to mandate a preference for handling area code relief. The increasing importance of numbering in interstate communications, and the Commission's ability to adopt uniform nationwide standards, support adoption of a policy expressing a preference.

The Commission has broad authority to oversee telephone numbering issues. As the Commission has explained, "a nationwide, uniform system of numbering is essential to the efficient delivery of interstate and international telecommunications services." *Chicago Area Code Order* at ¶ 13. In this situation, the Commission has an interest in creating a uniform manner for dealing with the growing problem of area code exhaust. By mandating a preference

for geographic splits, the Commission helps to promote such a uniform scheme which is in the public interest.

While the California Public Utilities Commission (the "CPUC") urges the Commission to simply provide guidance and to leave the specific resolution to the states, the Commission should take a more active role. CPUC Comments at 2-3. The CPUC is correct that the Commission did not use the *Chicago Area Code Order* to preempt state regulation of these issues. Nevertheless, the Commission recognized that it has jurisdiction to regulate where it is "not possible to separate the interstate and intrastate components of the asserted regulation." *Chicago Area Code Order* at ¶ 14 (citations omitted). Given the evident interstate implications of the choice of relief methods, the Commission plainly has the authority to make determinations regarding how area code relief should be accomplished.

Moreover, adopting preferences does not constitute preemption of state authority. Mandating a preference for geographic splits would satisfy the Commission's interest in promoting uniform solutions to numbering issues while maintaining active state involvement. Preferences still allow states to be actively involved in tailoring the NPA plan to each specific area. State authorities will be involved, for instance, in choosing the manner and location of a geographic split. In addition, state authorities will be able to approve overlays in the rare cases when overlays would be preferable to splits. These decisions will be greatly facilitated if the Commission provides appropriate policy guidance.

B. Area Code Splits Should Be the Preferred Method for Responding to Area Code Exhaust.

Although telephone companies struggle to define even *de minimis* benefits to overlays, those small benefits are outweighed by the substantial advantages of area code splits which are favored by consumers and new competitors alike. As described in Cox's comments, splits

should be preferred for several reasons. First, splits provide appropriate relief. They add as many numbers as an overlay, while retaining the basic characteristics of the North American Numbering Plan ("NANP"). Cox Comments at 8-9. Thus, when a customer in the 213 area code calls a customer in 310, she has a basic idea of where she is calling. Second, splits are well understood by consumers, so there is relatively little customer confusion. *Id.* at 9.

Overlays do not share these characteristics. Indeed, they distort the characteristics of the NANP by divorcing an area code from a specific place.^{3/} Indeed, overlays inevitably would result in requiring some customers to dial a different area code to reach their next-door neighbors. This will confuse callers both inside and outside the affected geographic region. Cox Comments at 12.

Third, overlays discriminatorily favor incumbents over new entrants in the telephone business, thereby impeding competition. Overlays allow incumbents to retain control over the NXX codes in the existing area code, giving them a substantial advantage over new entrants. Cox Comments at 9-10. The incumbents in overlay areas will be able to inform customers that switching to a competing service will require them to change not only their phone number, but their area code as well. Because of these discriminatory advantages, overlays should be strongly disfavored.

Only one commenter provides specific support for using overlay codes. Southwestern Bell argues that overlays reduce the impact of area code changes because no business is required to purchase new letterhead. Southwestern Bell Comments at 2. This small benefit of overlays cannot justify their use in light of the significant disadvantages of adoption of overlays. In fact,

3/ Cox Comments at 9. This is particularly so for "distributed overlays," such as the one proposed by Pacific, which use an overlay to provide relief to several existing area codes at the same time. Thus, under Pacific's plan, a caller to 562 eventually would be unable to tell if the call was going to the current 310 area code, the current 213 area or the current 818 area.

recent empirical evidence suggests that, even considering the need to change their stationery, businesses prefer a split to an overlay as a mechanism for obtaining area code relief.^{4/}

III. PACIFIC BELL'S PROPOSED RELIEF PLAN IS UNLAWFUL AND ITS REASONS FOR REJECTING SPLITS ARE DISINGENUOUS.

The parties to this proceeding are almost unanimous in agreeing that Pacific's plan is unlawful in light of the criteria established by the Commission in the *Chicago Area Code Order*. Pacific Bell's plan prohibits wireless carriers and new entrants from using new NXX codes in the 310 area code, but allows existing wireline carriers, including itself, to continue to obtain 310 NXX codes for 18 months or more. This plan is effectively identical to Ameritech's "exclusion" proposal, which the Commission found unreasonably discriminatory under Section 202(a) of the Communications Act and an unreasonable practice in violation of Section 201(b) of the Act. *Chicago Area Code Order* at ¶¶ 26, 35.

In addition, Pacific Bell proposes to assign some NXX codes to wireless carriers and new entrants on a "conditional basis." Under this provision, Pacific Bell would have the ability to require those codes to be returned for use by wireline customers. According to the Commission's *Chicago Area Code Order*, this proposal constitutes an unlawful "take-back" in violation of Sections 201(b) and 202(a) of the Act. *Id.* Even the CPUC noted in its comments that Pacific Bell's proposal is virtually identical to Ameritech's proposal and, therefore, most likely unlawful. *See CPUC Comments* at 2-3.

^{4/} See Part IV and Exhibit 1. It also has been suggested that use of an overlay avoids the need for number changes by cellular telephone users. This may be true, but a split does not necessarily require number changes if, as is the case in much of the country, the cellular NXX codes reside in a tandem rather than an end office. In that case, the NXX codes can remain with the original area code, as they did in the 213/310 split. In any event, the empirical evidence shows that even cellular customers prefer a split to an overlay. *Id.*

Moreover, Pacific's reasons for adopting an overlay instead of a split are disingenuous and simply reflect Pacific's self-serving preference for an overlay solution rather than a split. First, Pacific claims that it carefully considered this matter and determined that an overlay was the best solution. Pacific Comments at 8-10. This is not a reason but merely a statement of Pacific's preference. Pacific fails to acknowledge that it never proposed any option besides an overlay, and that it refused to alter its proposal throughout the discussions regarding 310 relief.

Pacific also asserts that it submitted an overlay of 310 only because more carriers seemed to favor that solution. Pacific Comments at 10. This assertion is false. As described in the Comments, ten of the twelve parties — all except the two LECs — participating in the relief discussions favored a split. Cox Comments at 6. Pacific plainly ignored the preference of other industry members and went forward with the plan it preferred.

Pacific also claims that the geographic region is too small to accommodate a split. This claim is without merit. Although the 310 area is relatively small when compared to, for instance, Colorado, it is certainly large enough to accommodate a split. Los Angeles, more than any other metropolitan area, is already well divided into regions and incorporated cities. For instance, a boundary in the middle of the 310 area could be easily established, separating the north and south of 310 into different area codes. There is no technical reason that would prevent a split. Pacific's claim that it cannot separate Beverly Hills from South Central Los Angeles for political reasons is not a persuasive reason for rejecting a split. Pacific Comments at 9. For one thing, this is an untested assertion. Equally important, such a split would not separate the "haves" from the "have-nots" because it would keep South Central Los Angeles in the same area code as other affluent communities such as Palos Verdes. Alternatively, an east-west or other split could be designed to meet Pacific's concerns.

Pacific also claims that a geographic split is not feasible because there are no geographic or topographic features it could use, and that, it would, therefore, run the risk of failing to satisfy California Public Utilities Code Section 2887. Pacific plainly runs no risk of violating any statute in implementing a geographic split. Section 2887 requires that whenever a telephone corporation establishes the boundaries for a new area code, which includes less than the entire area for a city, the telephone corporation should consider the following factors: (a) topography; (b) geography; (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts. The statute simply outlines the factors a telephone company should consider in drawing an area code boundary. It does not impose any specific requirements on the telephone company.

Pacific claims that it cannot draw a line to split the 310 area code. The truth, however, is that Pacific does not want to draw a line. It is in Pacific's interest to implement an overlay because an overlay gives it significant advantages over its competitors. Because of constant population movement throughout an area code, Pacific will always have a supply of 310 area codes. Pacific also has the ability to assign numbers in a manner that would maximize the availability of 310 numbers for its customers. For example, Pacific could give out only numbers in the 562 area code for data communications, in which one computer is calling another computer. Such a technique would leave available more 310 numbers for its voice communications customers. Moreover, Pacific Bell customers who move in the same area code can arrange to keep their telephone numbers. This option is not available to customers of Pacific Bell's competitors.

In addition, the Commission should not be persuaded by Pacific Bell's modest concessions. Pacific now claims that it has no plans to "take back" codes. Pacific Comments at 21. Although Pacific admits that it had written such a contingency into its relief plan, Pacific